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P&G Case No. 8043M

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6-14-02



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of JEFFREY JOHN KESTER, ET AL.

Confirmation No. 6353

Serial No. 09/827,834

: Group Art Unit: 1617

Filed: April 6, 2001

: Examiner: M. Bahar

For COMPOSITIONS FOR REDUCING HYPERCHOLESTEROLEMIA AND
CONTROLLING OF POSTPRANDIAL BLOOD GLUCOSE INSULIN LEVELS

RESPONSE TO THE OFFICE ACTION DATED MARCH 12, 2002

Assistant Commissioner for Patents

Washington, D.C. 20231

Dear Sir:

This response answers the office action dated March 12, 2002.

REMARKS

Claims 1-16, 23 (in part) and 27-28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable under Jandaceck (U.S. Patent No. 4,005,195), Akoh and an FDA announcement abstract.

The Examiner states that it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ beta glucan and polyol fatty acid esters (e.g., non-digestible fats) in a food composition. Also, the Examiner states that it would have also been obvious to employ beta glucan and polyol fatty acid esters in the amounts claimed herein.

The Examiner states that the reason for such an obvious combination derives from the motivation of one of skill in the art to employ beta glucan and polyol fatty acid esters in a food composition because they are both known to have anti-hypercholesterolemic effects. The Examiner also states that combining two agents which are known to be useful to have anti-hypercholesterolemic effects individually into a single composition useful for the very same purpose is prima facie obvious—the Examiner then cites *In re Kerkhoven* (205 USPQ 1069) as the case law having the exemplary holding. Lastly, the Examiner states that optimization of amounts is within the purview of the skilled artisan and is therefore obvious. These elements are cumulative; i.e., if one element fails, the entire test for obviousness fails.